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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO. 2021 OF 1992

Tarabai W/o Makbulkhan Bargir ... Petitioners
& anr.
vs
Tarabai W/o Dashrath Shinde ..Respondent
since deceased through her heirs and
legal representatives Rajaram
Dashrath Shinde @ Joshi & ors.
..
Mr.Tejpal Ingale for Petitioners
None for Respondent nos.1 to 5.
CORAM : D.G.KARNIK, J
DATE: 19TH AUGUST, 2004.
P.C.

1. By this petition, the petitioner challenges the judgment and order dated 1st April, 1991 passed by the learned IInd Additional District Judge, Sangli allowing Civil Appeal No. 50 of 1983 and dismissing the petitioner's suit for possession.

2. The petitioner is a landlord of the property bearting C.T.S.No.1897/1 Mangawar Peth, Miraj District Sangli. The respondent is a tenant of two rooms (hereinafter referred to suit premises) in the said house on a monthly rent of Rs.10/. The respondent was in arrears of rent from January, 1971 to June, 1976. Therefore, by a notice of demand dated 12th July, 1976 the petitioner terminated the tenancy of the respondent and called upon her to pay the arrears of rent. As the rent was not paid within one month, the petitioner filed a suit for possession bearing Regular Civil Suit No. 3 of 1979 in the Court of Civil Judge, Junior Division, Miraj. By a judgment and order dated 9th November, 1982 the trial Court decreed the suit on the ground of default. The ground of bonafide requirement was however rejected. On appeal by the respondent-tenant, the District Court allowed the appeal and dismissed the petitioner's suit by the judgment and order dated 1st April, 1991. That judgment is impugned in this petition.

3. By a notice of demand dated 12th July, 1976 the petitioner demanded from the respondent a sum of Rs.660/- being the arrears of rent from January 1971 to June, 1976. There is no dispute about standard rent and no application for determination of standard rent has ever been filed by the respondent. The respondent did not pay the rent within one month from

the date of notice. The appellate Court however held that the respondent had paid a sum of Rs.206/- to the deceased husband of the petitioner and had also paid the municipal taxes amounting to Rs.227/-. The appellate Court held that the respondent was entitled to adjust the amount of municipal taxes paid by her towards rent and after payment of Rs.206/- paid to the petitioner's husband and municipal taxes of Rs.227/- were taken into consideration, the respondent was entitled to an adjustment of Rs.434/-, out of the sum of Rs.660/-. The appellate Court held that in the notice, the petitioner had not shown the adjustment and therefore the demand of Rs.660/- made in the notice was excessive and exhorbitant. Relying on the decision of a learned Single Judge of this Court in Ganpat vs Motilal reported in AIR 1977 BOMBAY 344, the appellate Court held that the notice was invalid as it made a grossly excessive and exhorbitant demand of Rs.660/- when actually a sum of Rs.660/- minus Rs.434/- = Rs.226/- only was due. The appellate Court therefore held that notice of demand was not valid and therefore the respondent could not be branded as a defaulter.

4. The decision of this Court in Ganpat vs Motilal (supra) has been over ruled by a decision of a Division Bench of this Court rendered in Chhaganlal Mulchand Jain vs Narayan Jagannath Bangh reported in AIR 1983 BOMBAY 212. Therein the Division Bench observed:

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" In our opinion, this will not be a correct proposition. The normal rule is that a notice exchanged between the landlord and the tenant should be construed liberally and not for the purpose of finding any fault. This has been so held by the Supreme Court in the case of Bhagabandas Agarwalla vs Bhagwandas AIR 1977 SC 1120. We have already observed that the landlord and the tenant both are presumed to know as to what is the quantum of rent and permitted increases that had remained unpaid and hence when the landlord claimed the payment of such arrears by a notice any mistake as regards the quantum of rent would not make the notice bad. It will be very difficult to accept the contention that a mistake here or a mistake there in the demand notice would entail the dismissal of the suit. It is possible that in a particular case the landlord may make a false and untenable demand of certain amount alongwith the claim about which there will not be any dispute,. In such a case the tenant will have an option to pay the undisputed amount of rent and to give a reply that the rest of the claim was a false one. If in due course of time at the stage of the suit the claim is proved

to be false the tenant obviously would be protected as he has made th payment of the amount that was actually due. But he will not be able to resist the same if within one month from the notice has not paid even the arrears to which the landlord is entitled. The view expressed in the case of Ganpat vs Motilal (AIR 1977 Bom 344) (supra) that the notice would be bad if the notice includes untenable claim is too general a statement and we disagree with it. "

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5. In view of the law laid down by the Division Bench of this Court, the finding recorded by the appellate Court that the notice was invalid is required to be set aside. As the rent for more than 6 months was due and there was no dispute regarding the standard rent and as the respondent had not paid rent within one month of a notice of demand a decree for eviction had to follow. Accordingly, the impugned judgment and order is set aside and the judgment of the trialCourt is restored.

6. Petition allowed. Rule made absolute in terms of prayer clause (d).

D.G.KARNIK, J

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